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September 12, 2012

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## VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: December 6, 2010 and January 11, 2011 Requests for Review by Puerto Rico Telephone Company of Decisions of the Universal Service Administrator; WC Docket No. 08-71

Dear Ms. Dortch:

This letter concerns requests for review that the Puerto Rico Telephone Company (PRTC) filed with the FCC seeking the reversal of two decisions by the Universal Service Administrative Company (USAC) which erroneously determined that PRTC was “overpaid” in Interstate Common Line Support (“ICLS”).<sup>1</sup> As PRTC explained in its requests for review, USAC’s decisions should be reversed because USAC retroactively applied document retention rules that became effective in January 2008 to PRTC’s conduct from 2004 to 2005.<sup>2</sup>

To date, the Commission has not granted PRTC’s requests. We submit the instant letter, however, to highlight USAC’s recent admission—in an unrelated audit of PRTC—that the document retention rules in question *do not apply to carrier conduct before January 2008*. In that case, the auditors—Cotton & Company LLP—alleged that PRTC made reporting errors in its 2007 FCC Form 525

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<sup>1</sup> On December 6, 2010, PRT sought review of USAC’s Management Response to Audit Report HC-2009-FL-041, Follow-up Audit to HC-2007-299. *See* Puerto Rico Telephone Company Request for Review of a Decision by the Universal Service Administrative Company, WC Docket No. 08-71 (filed Dec. 6, 2010). On January 11, 2011, PRT sought review of USAC’s Management Response to Audit Report HC-2009-FL-119, Follow-up Audit to HC-2008-151. *See* Puerto Rico Telephone Company Request for Review of a Decision by the Universal Service Administrative Company, WC Docket No. 08-71 (filed Jan. 11, 2011).

<sup>2</sup> The record-keeping requirements applicable to recipients of ICLS and USAC’s ICLS audit authority—as set forth in Section 54 of the Commission’s rules—changed dramatically as of January 23, 2008. Prior to that date, the FCC’s rules did not require ICLS recipients to maintain specific documents and only granted USAC vague authority to audit the veracity of ICLS data submitted to USAC. It was not until January 23, 2008 that a specific document retention rule for recipients of high cost funding took effect. Importantly, no such rule was in effect in 2004 or 2005, the time during which PRT allegedly failed to maintain the records necessary to justify its receipt of ICLS.



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submissions; namely, that PRTC could not produce documentation for lines reported on its FCC Form 525 submissions for 2007. On appeal, PRTC asserted that the FCC's document retention rules did not become effective until 2008 and therefore PRTC's failure to retain billing records was acceptable during the audited period. USAC—in the attached August 10, 2012 letter—"concur[red]" that the "document retention requirements set forth in Section 54.202 of the FCC's rules were not in effect for the time period audited." Accordingly, USAC granted PRTC's appeal for that part of the auditor's findings.

Given USAC's admission that the document retention rules do not apply to conduct pre-2008, we ask that the Commission immediately grant PRTC's above-captioned requests for review and reverse USAC's "overpayment" determinations. As noted above, the conduct in question took place from 2004-2005, well before the document retention rules became effective in January 2008.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Thomas J. Navin

Thomas J. Navin

*Counsel for Puerto Rico Telephone Company, Inc.*

cc: David Capozzi, USAC

## ATTACHMENT A



***Administrators' Decision on High Cost Program Beneficiary Appeal***

*Via Email and Certified Mail*

August 10, 2012

Bennett L. Ross  
Wiley Rein LLP  
1716 K Street, NW  
Washington, DC 20006

Re: Appeal of the 2008 FCC Office of Inspector General USF Audit Program Audit of  
High Cost Program Beneficiary: Puerto Rico Telephone Company d/b/a Verizon  
Wireless Puerto Rico (SAC 639006), Audit HC-2008-099

Dear Mr. Ross:

The Universal Service Administrative Company (USAC) has reviewed the appeal filed by Wiley Rein LLP on behalf of Puerto Rico Telephone Company d/b/a Verizon Wireless Puerto Rico (PRTC), dated January 4, 2010, concerning USAC's decision to recover \$755,349 in High Cost Program support disbursed for the 12-month period ending June 30, 2007.<sup>1</sup> The amount to be recovered was determined by an audit of PRTC conducted by Cotton & Company LLP, under the FCC Office of Inspector General (OIG) Universal Service Fund (USF) audit program.

PRTC disputed audit finding HC-2008-BE099\_F01 stating that: (i) "the auditor's calculation of the ICLS overpayment does not appear to reflect true ups to [PRTC's] ICLS payments in subsequent periods"; and (ii) "the auditor's conclusion that PRTC did not report accurate line counts on its March 30, July 31, September 30 and December 30, 2007 Form 525 submissions was premised, in significant part, upon PRTC's inability to produce records documenting the line counts it reported," which PRTC was not required to maintain under FCC rules in effect at that time.<sup>2</sup> In addition, PRTC conceded to erroneously "including in its Form 525 submissions customer lines with billing addresses outside of Puerto Rico".<sup>3</sup>

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<sup>1</sup> Letter and Independent Accountants Report No. HC2008BE099 from Cotton and Company LLP to the Puerto Rico Telephone Company, dated June 15, 2009 (*Independent Accountants Report*).

<sup>2</sup> Letter from Bennett Ross for Puerto Rico Telephone Company to the High Cost and Low Income Division of the Universal Service Administrative Company, dated Jan. 4, 2010, page 1 (*Jan. 4th letter*).

<sup>3</sup> *Jan. 4th letter*, page 4.

Decision on Appeal: Granted in part. USAC has determined that \$158,780<sup>4</sup> of previously disbursed High Cost Program support should be recovered.

### Discussion

During testing, the auditors found reporting errors in PRTC's 2007 FCC Form 525 submissions.<sup>5</sup> First, PRTC's reporting included lines for customers with billing addresses outside of Puerto Rico. Second, PRTC could not produce documentation for lines reported on its FCC Form 525 submissions for March 30, July 31, September 30, and December 30, 2007.<sup>6</sup>

The auditors' finding highlighted material internal control weaknesses in PRTC's Form 525 submissions due to the deficiencies in the eligible line count documentation.<sup>7</sup> These deficiencies were due to PRTC's policy of not maintaining service records for customers who had terminated service with PRTC.<sup>8</sup>

PRTC claimed the auditors incorrectly applied FCC document retention rules to line count submissions prior to their effective date.<sup>9</sup> The carrier asserts that the FCC's *Program Management Order*<sup>10</sup> record retention requirements did not become effective until 2008. Therefore, PRTC contends its practice of not maintaining the billing records of customers who terminated service was acceptable during the audited period.

PRTC also appealed the auditors' ICLS overpayment calculations.<sup>11</sup> The carrier's appeal argued the calculation of the potential recovery was over-stated because the auditors used projected rather than the final true-up ICLS rates based on actual ICLS received.<sup>12</sup> PRTC opposed any recovery related to the auditor's disallowance of line due to insufficient

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<sup>4</sup> See Appendix A of this Administrator's Decision Letter: The auditor calculated recovery of \$755,349 was revised because it inappropriately included recovery for lines that were disallowed due to insufficient documentation. PRTC's proposed recovery of \$138,000 for lines located outside of Puerto Rico was incorrect because the carrier's calculation did not utilize final ICLS per-line settlement rates. USAC's calculation utilized the final ICLS per-line settlement rates to the non-Puerto Rico based line counts reported by PRTC to determine that USAC should recover \$158,780 from PRTC. Appendix A delineates that the variance between USAC's and PRTC's calculation was USAC's use of the final ICLS per-line settlement rates.

<sup>5</sup> *Independent Accountants Report*, page 2.

<sup>6</sup> *Independent Accountants Report*, page 3.

<sup>7</sup> *Independent Accountants Report*, page 2.

<sup>8</sup> *Jan. 4<sup>th</sup> letter*, page 3.

<sup>9</sup> *Jan. 4<sup>th</sup> letter*, page 3.

<sup>10</sup> Comprehensive Review of the Universal Service Fund Management, Administration, and Oversight, Report and Order, 22FCC Rcd. 16372, FCC 07-150, ¶ 24 (2007) (*Program Management Order*).

<sup>11</sup> *Jan. 4<sup>th</sup> letter*, page 1.

<sup>12</sup> ICLS is based on projected support that is subjected to a true-up when actual data is received on Dec. 31 of each year.

documentation. PRTC conceded to the auditors' recovery related to non-Puerto Rico based lines and calculated a proposed recovery of \$138,000.<sup>13</sup>

The first element of the finding is related to the auditor's disallowance of lines that lacked sufficient documentation. USAC concurs with PRTC that the document retention requirements set forth in Section 54.202<sup>14</sup> of the FCC's rules were not in effect for the time period audited. USAC hereby grants PRTC's appeal on this portion of the finding.

The second element of the finding was the auditor's disallowance of lines having billing addresses outside of Puerto Rico. PRTC admitted that these lines should not have been reported.<sup>15</sup> USAC staff applied PRTC's data for non-Puerto Rico based lines and USAC's final ICLS per-line rates (i.e., per-line rates that account for ICLS true-ups included in payments subsequent to the audit period).<sup>16</sup> The auditor's initial recovery calculation of \$755,349 was incorrect because it used an erroneous ICLS per line rate and the disallowance of lines for insufficient documentation. USAC recalculated PRTC's recovery amount to be \$158,780.<sup>17</sup>

#### USAC Action and Carrier Appeal Rights

USAC hereby grants in part PRTC's appeal and will recover \$158,780 in High Cost Program support associated with this finding. If any further errors are found in any of PRTC's reporting for the period under audit herein, USAC reserves the right to recover the financial impact of those deviations.

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If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54, Subpart I. Detailed instructions for filing appeals are available at:

<http://www.usac.org/hc/about/program-integrity/appeals.aspx>

/s/ USAC

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<sup>13</sup> Jan. 4th letter, page 4 and See *Supra* Note 5.

<sup>14</sup> 47 CFR §54.202(e) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. These records should include the following: data supporting line count filings; historical customer records; fixed asset property accounting records; general ledgers; invoice copies for the purchase and maintenance of equipment; maintenance contracts for the upgrade or equipment; and any other relevant documentation. This documentation must be maintained for at least five years from the receipt of funding.").

<sup>15</sup> Jan. 4th letter, page 4.

<sup>16</sup> The audit period was for the year ending Jun. 30, 2008 and included PRTC's line count reporting on its Mar. 30, Jul. 31, Sept. 30 and Dec. 30, 2007 FCC Form 525 filings.

<sup>17</sup> See *supra* note 5.